In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1261

ROBERT RIMERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial, petitioner was convicted in the United States District Court for the Eastern District of Missouri on two counts of an indictment charging the concealment and sale of counterfeit obligations of the United States in violation of 18 U.S.C. 472 and 473. On April 21, 1966, he was sentenced to imprisonment for thirty months on each count, the terms to run concurrently. The court of appeals affirmed (Pet. App. 17–27).

Petitioner does not challenge the sufficiency of the evidence. On August 18, 1965, he entered the Jefferson Bank and Trust Company (where he regularly banked) and asked a teller, Stephen Wood, to com-

262-714—67

pare a bill with a list of counterfeit bills regularly recorded at the bank. A comparison was made, and Wood informed petitioner that the bill was not counterfeit. Petitioner then offered Wood $1000 if the latter would circulate $7000 in counterfeit bills. Wood refused the offer, and petitioner told him to think it over (Tr. 9–12).[1] After petitioner left, Wood reported the offer to his superior, who, in turn, notified the Secret Service (Tr. 16). Subsequently, Wood called petitioner and said that he would accept the offer (Tr. 17). It was eventually agreed that petitioner would give Wood $300 in counterfeit $10 bills in exchange for six genuine $50 bills and that Wood would receive $50 for his effort in the transaction (Tr. 18–20). On October 21, petitioner passed the counterfeit money to Wood and received the genuine $50 bills, the serial numbers of which previously had been recorded by Secret Service agents (Tr. 21–28). Shortly thereafter, petitioner was arrested. Five of the marked $50 bills were found in his wallet (Tr. 44, 49).

Petitioner, testifying in his own behalf, denied that he had made any overtures to Wood to pass counterfeit money (Tr. 68–69, 75–76) or that he had been aware that the bills were counterfeit (Tr. 74). He explained that the $10 bills had been given to him by a salesman, and that he had exchanged them for $50 bills because his safe deposit box was not large enough to accommodate the smaller bills (Tr. 71–73). Petitioner further testified that the $50 bill which he had given to Wood was a loan (Tr. 68–70).

[1] "Tr." indicates the transcript of testimony in Volume III of the record filed with the Clerk of this Court.

Petitioner's sole contention is that the court committed error in that, after instructing on the effect of expert testimony and opinion evidence, it charged (Tr. 125):

> When a defendant in a case of this kind takes the stand, which he has a perfect right to do, he is subjected to all of the obligation of a witness, and his testimony is to be treated like the testimony of any other witness, that is to say, it will be for you to say, remembering the matter of his testimony and the manner in which he gave it, his cross-examination and everything else in the case, whether or not he told the truth. Then, again, it is for you to remember, you have the right to do so, and it is your duty to do so, the interest the defendant has in the outcome of this case.

These instructions were followed by instructions pertaining to reputation evidence and credibility (Tr. 125–127).

The court below properly held that the above instructions did not, as petitioner argues, over-emphasize the defendant's interest in the case so as to deprive him of a fair trial. The charge did not intimate that the testimony was untruthful, or that petitioner was incompetent to testify. It in no way deprived petitioner of the presumption of innocence. It was merely a reasonable statement of the factors properly to be considered in judging petitioner's credibility. *Reagan* v. *United States,* 157 U.S. 301; *Caldwell* v. *United States,* 338 F. 2d 385, 392 (C.A. 8), certiorari denied, 380 U.S. 984; *United States* v. *Sullivan,* 329 F. 2d 755 (C.A. 2), certiorari denied, 377 U.S. 1005;

Fisher v. *United States*, 149 F. 2d 28 (C.A.D.C.), affirmed, 328 U.S. 463.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

MAY 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967